

Joint Committee on Boards, Commissions, and Consumer  
Protection

# **BACKGROUND PAPER FOR HEARING**

**December 7, 2005**

## **SPECIAL REPORT OF THE BUREAU FOR PRIVATE POSTSECONDARY AND VOCATIONAL EDUCATION ENFORCEMENT MONITOR**

**Report by Benjamin M. Frank**

**BACKGROUND, SUMMARY OF FINDINGS, AND  
QUESTIONS**

### **BACKGROUND RELEVANT TO THE ENFORCEMENT MONITOR'S REPORT**

The Bureau for Private Postsecondary and Vocational Education (Bureau), under the operational control of the Department of Consumer Affairs (Department), was last reviewed by the Joint Committee on Boards, Commissions, and Consumer Protection (Joint Committee) in 2004.

The Bureau explains its legal responsibilities as follows:

“The Bureau for Private Postsecondary and Vocational Education -- part of the California Department of Consumer Affairs -- works to protect students attending privately operated postsecondary educational institutions.

These schools contribute to California's economy, providing educational options for younger students, and increasingly catering to older students looking to advance or change their careers. The Bureau regulates approximately 1,800 schools serving an estimated 400,000 students.”

The Bureau establishes educational standards that are intended to serve as the minimum standard for instructional quality and institutional stability for private postsecondary schools in California. The Bureau responds to student complaints and oversees a fund designed to help reimburse a student's tuition if a school closes unexpectedly. The Bureau is also responsible for approving education and training programs for veterans.”

Because of persistent problems with the Bureau, SB 1544 (Figueroa, Chapter 740, Statutes of 2004) required the appointment of an enforcement monitor to provide an in-depth, thorough, and impartial examination of the Bureau's operations (Report). SB 1544 also extended the sunset date of the Bureau only two and one half years instead of the customary four. The Bureau is currently slated to sunset in mid-2007.

The thorough 178-page Report by Monitor Benjamin Frank of NewPoint Group Management Consultants is summarized below. The Monitor will be presenting his Report to the Joint Committee on December 7. Possible questions for members are included at the end of this Background Paper.

## **SUMMARY OF MONITOR'S REPORT**

### **A Twenty Year Record Of Repeatedly Identified, Fundamental Problems In Every One Of The Bureau's Key Operations**

According to the Monitor, “[t]he state's program for regulation of private postsecondary and vocational education institutions has been plagued by problems for the past 20 years.”

In the late 1980s, the state developed a reputation as the “diploma mill capital of the world.” As a result, regulation of the industry was moved from a Division in the State Department of Education to a 20-member Council for Private Postsecondary and Vocational Education (Council).

In 1995 the California Postsecondary Education Commission found the governing statutes difficult to interpret and implement. Likewise, the Commission found that the Council’s school approval process for non-degree granting institutions consisted of nothing more than a checklist; no in-depth review was done and the Council assumed that the quality of the school’s program was sufficient if the school self-reported completion rates of 60% or better and a 70% placement rate.

In 1996, the Governor vetoed legislation that would have extended the 1997 sunset date of the Council.

In August 1997, anticipating the creation of the Bureau within its jurisdiction, the Department retained Price Waterhouse to perform a diagnostic review of the Council’s accounting procedures. The 1997 report documented significant problems in fee collection, collection of Student Tuition Recovery Fund (STRF) fees, the reporting done by schools to the Council about their job placement successes, and accounting internal controls.

This report prompted reform legislation in late 1997, including the requirement that transformed the Council into a Bureau under the direction of the Department.

Since 1998, the program has been a “bureau;” meaning it is directly under the responsibility of and accountable to the Department.

In 2000 the Bureau of State Audits completed an audit of the Bureau. The audit found that the Department was not fulfilling its basic oversight duties and was allowing known weaknesses in operations to endure.

In 2002, the Department completed its own internal audit. That audit in part recommended that the Bureau abide by laws governing the payment of STRF funds, verify that the correct STRF funds were being paid, monitor workloads to ensure that statutory time frames are met for approving schools, develop written guidelines for handling complaints, and ensure

compliance with annual reporting requirements, including those that require schools to report placement success rates to the Bureau.

In 2002, the Joint Committee completed its first sunset review of the Bureau, and the Bureau committed to various reforms, including sponsoring reform legislation and identifying actions to protect students in the context of Internet-based education. SB 364 of 2003 was enacted after the review and it required the Bureau to identify legislative reforms and study its fee structure to ensure solvency and sufficient resources.

In August of 2004, *The Sacramento Bee* published an article that revealed the Bureau to be a passive regulator, leading one public interest lawyer to say that the Bureau “is totally worthless.”

As the Monitor writes: “[n]early all of the problems identified by the Bureau of State Audits and the [Department’s audit] continue to persist.” Likewise, the Monitor observes: “[n]early all of the problems identified by the [Joint Committee] continue to persist. Additionally, the results of the assessment substantiate the allegations recently reported in *The Sacramento Bee*.”

### **Monitor’s Specific Findings**

The Report in the main reinforces the findings of numerous prior reports over the last eight years that the Department’s Bureau, by almost any measure and in almost every key aspect, is still a fundamentally flawed regulatory program that both does an inadequate job of protecting consumers and impedes the expansion of quality postsecondary and vocational educational opportunities for Californians.

- *Licensing.* Schools operate for years under licenses that are supposed to be “temporary.” Two hundred and twenty-five schools are operating without a full approval to do so. A quarter (75) of approved degree-granting schools are operating on temporary approvals. Of those, 29 have been operating on such approvals for more than two years; seven for more than four.
- *Enforcement.* Unannounced site visits required by law do not occur. The Bureau has never revoked the license of a school; never even placed a school on probation. Fines for the operation of unapproved schools

(\$2,500) are too low to promote compliance with the law. The Board has not promulgated regulations that would permit it to charge higher fines permitted by current law (\$5,000), which would still likely be too low to promote compliance. Fines are rarely assessed in any event. This may be due to the fact that just one person has the job of investigating complaints against unapproved institutions, which currently number up to 300. Where approved schools are concerned, investigations mostly rely on documents generated by the schools under investigation; Bureau investigators have no formal training in investigation. And even if the Bureau had better investigative resources, the remedies at its disposal are paltry. The Bureau does not have the statutory authority to order refunds or restitution to a student or group of students.

- *Reporting.* State law requires that certain schools provide information to the state showing how many students actually obtain jobs six months after graduation. A “significant” number of such reports are “past due” and up to a third are chronically late. And the Bureau never verifies what is reported anyway.
- *The STRF program.* All of the STRF staff told the Monitor they were transferring to other state jobs. Claims for payment can linger for more than two years. The Bureau rarely makes sure that institutions are paying the right amount of fees into the STRF. Bureau staff believe that only half of the legally required fees are being paid. Because of shortages in one of the STRF funds, the Bureau routinely – and maybe illegally – uses fees paid by degree-granting schools to pay claims of students from non-degree granting schools and there is no plan for repayment or reconciliation.
- *Insolvency.* The Bureau’s statute-imposed study of its fee structure did not recommend raising fees, lowering fees, or keeping fees the same. This, notwithstanding the fact that the same study concedes that “[r]evenue ... is insufficient to support ongoing operations.” (All that would be required, for example, to include a minimally meaningful fee proposal would have been to take the total amounts collected, the total amounts spent, subtract, get the difference, then apportion the difference proportionally between the respective fee sources of income.)

The Report also documents Bureau regulatory practices that appear arbitrary. An unpredictable regulatory environment raises the financial risk

of opening a school in California, potentially impeding educational opportunities.

- *Illegal fees.* Schools for years have been assessed fees without there being statutory or regulatory authority for the assessment.
- *Arbitrary enforcement done through the wrong means.* Because of gross deficiencies in its enforcement program, the Bureau tries to pursue enforcement by forcing schools to agree to conditions before approving them. This leads to arbitrary and subjective enforcement that denies the school a fair process for addressing complaints on the merits.
- *Bureaucracy.* The Bureau requires schools to submit re-approval applications – which are supposed to document only changes from the last application – that include large amounts of information beyond what the law contemplates, making that process more expensive and time consuming for schools than contemplated by law.

### **Possible Questions**

The Monitor's Report essentially identifies two causes of the Bureau's problems: problems arising from a needlessly complex and confusing statutory scheme and problems caused by simple lack of vigorous oversight and management by the Department.

#### **Questions related to problems primarily caused because the governing statutes need revision and reform.**

Among the statutory reforms the Monitor recommends are those that require:

- Consolidation of degree and non-degree granting programs.
- Allowing consumers access to enforcement and related public records via the Board's website, as is done with virtually all other Department boards.
- A deliberative approval process for new institutions similar to accreditation where schools are evaluated over the course of years.

- The Bureau to develop and implement a proactive enforcement program that targets unapproved schools.
- Formal warning notices and the imposition of meaningful sanctions, fines and penalties that take into consideration the amount paid by students.
- Clear delineation between enforcement and disciplinary processes and licensing and approval processes.
- Resolution of the problem of the Bureau being forced to approve institutions which are otherwise statutorily exempt from its regulatory reach.
- Simplification of the new institution approval application process.
- Increases for new non-degree license application fees to a level sufficient to fund costs associated with processing the applications and increase other fees to fully fund essential and legally required enforcement, such as unannounced on-site inspections.
- Decreases of reapproval fees for degree granting schools and increase such fees for non-degree schools.
- A longer religious exemption, from two to three years.
- Clarification of the Bureau's power to demand course catalogues, course outlines and other documentation to determine religious exemption eligibility.
- An overhaul of the statutes governing the Registration Program.
- Fingerprinting of persons submitting agent permit applications.
- Repeal of the statutory caps on STRF administrative expenditures and fund and enact other accounting changes.
- Revision of the annual report statutes to more clearly outline the Legislature's expectations for the Bureau.

**Question # 1 for the Bureau and the Department:** *In 2002, during its sunset review, the Bureau committed to sponsoring legislation to reform school approval procedures and ensure appropriate enforcement. SB 364(Figueroa, Chapter 789, Statutes of 2003) also requires Bureau staff to work with the Joint Committee to streamline statutes and eliminate contradictions, ambiguities, etc. The last effort to craft such legislation was in 2003.*

*Now that there has been time for the Department and the Bureau to consider the findings and recommendations in the Report, by what date certain can we expect the Department and the Bureau to take a leadership role in proposing legislation or a process to craft such legislation to correct the numerous problems in the program it is responsible for running?*

**Question #2 for the Bureau and the Department:** *State law requires the Department's Bureau to submit Annual Reports to the Legislature documenting "its activities during the previous fiscal year." Such reports shall include, but not be limited to, timely information relating to the enforcement activities of the bureau, statistics providing a composite picture of the private postsecondary educational community, including data on how many schools, as classified by subject matter, and how many students there are within the scope of the activities of the bureau.*

*The last such report was submitted in 2001/02. According to the Monitor, the Bureau has not submitted these legally required reports for 2002/03 or 2003/04. The information in such reports could lay the groundwork for statutory reform.*

*Why has the Bureau not fulfilled its obligation to provide the Legislature these reports and by what date certain can the Legislature expect compliance? Do the Department and the Bureau believe that any request for information from the Joint Committee in any calendar year that the Bureau responds to satisfies the duty to provide an annual report containing the information specified in the statute?*

**Question # 3 for the Bureau and the Department:** *The Bureau's nine month old fee study did not recommend any reforms or changes in the Bureau's fee structure, even though it acknowledged that the Bureau will soon run out of money:*



*“Revenue into the Bureau’s [special fund] is insufficient to support ongoing operations ... Unless revenues increase or expenditures decrease, the [special fund] is projected to incur a deficit of \$232,000 in Fiscal Year 2007/08.”*

*True, a literal reading of the code section requiring the study does not require the Bureau and the Department to recommend changes in fees in the same study that acknowledges that the program is headed toward insolvency, but fulfillment of their overall statutory responsibility to the public does.*

*By what date will the Bureau and the Department provide a new proposed fee structure to the Legislature and will that date reflect that the Bureau and the Department comprehend the urgent need to address the numerous, ongoing, and fundamental flaws in the Bureau’s essential programs?*

**Question # 4 for the Bureau and the Department:** *The Monitor recommends a substantial increase in fees as providing sufficient resources for the Bureau just to “perform its most critical, statutorily-mandated responsibilities.” What is the Bureau’s and Department’s response?*

#### **Questions related to problems primarily caused because of operational failings.**

The Monitor also recommends many reforms that can be implemented by the Department and Bureau right now, without changes in statute. Among the administrative and regulatory reforms the Monitor recommends are those that require the Bureau to:

- Adopt meaningful minimum financial standards for schools;
- Complete initial site reviews within 4 to 6 months of a school beginning operations;
- Restore Education Specialist positions;

- Implement the unannounced inspection program required by current law;
- Seek additional resources to allow for several hundred site visits per year;
- Include in the Bureau's Annual Reports the number of unannounced site inspections performed per year and the time spent on each;
- Develop a shorter reapproval application;
- Provide Bureau investigative staff with access to reverse and unlisted phone directories and other government records;
- Adopt regulations under the Business & Professions Code to allow the Bureau to levy higher fines than those permitted by the Education Code;
- Restore Senior Investigator positions to provide some minimum of core qualified investigative expertise and leadership;
- Reduce documentation required to close a complaint that is not referred to investigation;
- Prepare and submit regulations implementing the voluntary arbitration program and request or seek funding to implement it;
- Require that STRF repay the Bureau's special fund at least \$1 million;
- Establish a procedure to refund excess supplemental assessments that were credited to some institutions STRF accounts;
- Seek additional positions to ensure that STRF fees are being paid according to law;
- Require schools to submit their financial, operational, and performance data separately. This will allow the Bureau to insist

on the submission of financial solvency data before operational and performance data are sent in;

- Develop uniform school performance data elements and apply throughout the Bureau;
- Allow schools to submit their annual reports electronically;
- Allow the public to access comparative school performance data via its website;
- Allow public access to school complaint information via the Bureau's website; and,
- Seek restoration of staffing to pre-hiring freeze levels.

**Question #5 for the Bureau and the Department:** *Each of these items is within your present ability. What is your opinion of each of these recommendations and what is the date certain by which you will act?*